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GARVEY SCHUBERT BARER

JAN 16 2003

January 16, 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYVia Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Vistronix, Inc.
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

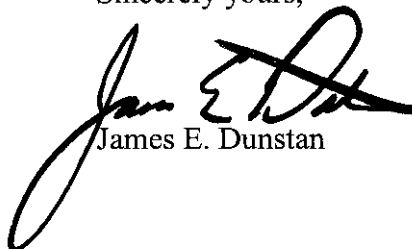
Re: Meredith Corporation
WHNS and WHNS-DT, Asheville, North Carolina
MB Docket No. 02-363
RM - 10604

Dear Ms. Dortch:

Transmitted herewith, on behalf of Meredith Corporation are an original and four copies of its "Comments of Meredith Corporation in Support of Notice of Proposed Rulemaking" in connection with the above-referenced proceeding.

If there are any questions concerning this matter, kindly communicate directly with this office.

Sincerely yours,


James E. Dunstan

JED:cl
Enclosure

cc: Barbara Kreisman, Chief
Video Services Division

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

¹ DA 02-3189, released November 25, 2002.

modified to specify the new city of license without allowing competing applications. A copy of that Petition, and supporting documentation, is attached hereto.

The *NPRM* recites most of the key factors listed by Meredith in its Petition supporting a change in the city of license of WHNS from Asheville, North Carolina, to Greenville, South Carolina.² These facts show a clear and steady shift in population and economic activity from Asheville to Greenville. Fully two-thirds of the market's television households reside in South Carolina.³ Retail trade centered around Greenville is approximately five-times as great as that centered around Asheville! Clearly, if the Commission were today working with a "blank slate" in allocating television stations to this market, it would allocate three stations to Asheville, and four to Greenville, rather than the current configuration of four stations licensed to Asheville, and three to Greenville.

The *NPRM* nevertheless states that "we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments."⁴ Such a change is completely supported by Commission policy, however. In its *Modification of FM and TV Authorizations*,⁵ the Commission amended its rules to allow more flexibility in assigning radio and television stations, specifically noting that stations are in the best

² See *NPRM*, ¶¶ 4-5.

³ *Id.* at ¶ 4.

⁴ *Id.*

⁵ *Id.* at ¶ 8.

⁶ *Modification of FM and TV Authorizations*, 4 FCC Rcd 4870,4873 (1989); *aff'd Modification of FM and TV Authorizations (Reconsideration)*, 5 FCC Rcd 7094 (1990).

position to determine how to serve their markets? The Commission specifically stated that changes that do not involve loss of service would be considered favorably, especially where the change requires no change in transmitter site, channel, or channel class.⁸ The Commission also noted that it could be even more flexible with television allotments, since television is a more regional service.' Finally, the Commission noted that it would not block a change based on loss of service to a community unless it constituted loss of first or second local service.' Since the proposed change implicates none of these negative aspects of a city of license change, there is no regulatory impediment to making the change.

To the viewer, the proposed change will have no impact on what they see on WHNS. WHNS will continue to operate from the same transmitter location, on the same channel, and with the same power. WHNS will continue to air its 10p.m. news, covering issues and events relevant to the entire market, including the city of Asheville.

The change will positively impact the advertising market, however, as it will bring into alignment the perception of most advertisers and the allocation of stations in the market. As the Declaration of then-General Manager Ray Mirabella attached to Meredith's Petition stated, although WHNS is licensed to Asheville, it receives virtually no local advertising dollars from that city. WHNS has never been able to compete for a large share of the limited Asheville advertising dollars because of the dominance of

⁷ *Id.* at 4873.

⁸ *Id.* at 4873-74.

⁹ *Modification of FM and TV Authorizations (Reconsideration)*, 5 FCC Rcd at 7098, n.4.

¹⁰ *Modification of FM and TV Authorizations*, 4 FCC Rcd at 4873.

WLOS, the ABC affiliate that signed on the air in 1954, and has strongly identified itself as an Asheville station. As a relative late-comer to Asheville, WHNS has struggled to obtain any of the local advertising dollars out of that city. Instead, advertisers from the beginning of WHNS' existence generally identified WHNS as a Greenville station, and WHNS has competed for the larger pool of Greenville advertising dollars. It nonetheless is handicapped, since it constantly has to explain to local Greenville advertisers **less** familiar with the market why they should buy time on a station licensed to Asheville. The requested change would do nothing more than to bring regulatory treatment in line with market realities.

Meredith submits that the proposed city of license change is exactly the type of change that "would result in a preferential arrangement of allotments," and generally would advance the "fair, efficient and equitable distribution of radio service."¹²

Further, and pursuant to paragraph 10 of the *NPRM*, and Section 1.420 of the Commission's Rules,¹³ Meredith hereby confirms its continued interest in the proposed change, and confirms its present intent to operate WHNS **as** a facility licensed to Greenville, South Carolina, if so allowed.¹⁴

WHEREFORE, Meredith respectfully requests that the Commission issue an order amending the table of allotments in Section 73.606 and 73.622(b) to delete analog Channel 21 and digital Channel 57 from Asheville, add those channels to Greenville, and

¹¹ *See* 4 FCC Rcd at 4873

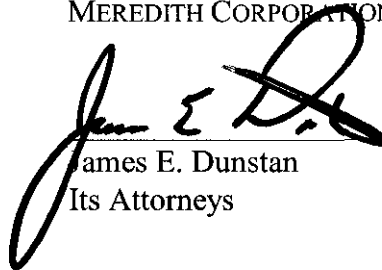
¹² *Id.* at 4874.

¹³ 47 C.F.R. § 1.420.

modify Meredith's licenses for WHNS to specify Greenville as the city of license for WHNS and WHNS-DT.

Respectfully submitted,

MEREDITH CORPORATION

A handwritten signature in black ink, appearing to read "James E. Dunstan", is written over a horizontal line. The signature is stylized with a large, looping initial "J".

James E. Dunstan
Its Attorneys

GARVEY SCHUBERT BARER
1000 Potomac Street N.W., Fifth Floor
Washington, D.C. 20007
202-965-7880

January 16, 2003

¹⁴ See Declaration of Richard Williams, GM of WHNS, attached hereto.

**DECLARATION OF RICHARD WILLIAMS,
VICE PRESIDENT AND GENERAL MANAGER,
TELEVISION STATION WHNS(TV),
ASHEVILLE, NORTH CAROLINA**

**IN SUPPORT OF COMMENTS IN RESPONSE TO NOTICE OF PROPOSED
RULEMAKING IN MB DOCKET NO. 02-263**

I, Richard Williams, do hereby declare and affirm as follows:

1. I am over the age of twenty-one, and I make this Declaration on the basis of my own personal knowledge, in support of the foregoing Comments filed in MB Docket No. 02-263

2. I am a Vice President of Meredith Corporation, and the General Manager for television station WHNS, currently licensed to Asheville, North Carolina. I have reviewed the Commission's *Notice of Proposed Rule Making ("NPRM")*, and submit that it makes a compelling case for changing the city of license of WHNS from Asheville to Greenville. WHNS is regarded as a Greenville station within the market, and the facts reported in the *NPRM* remain true today concerning the preponderance of viewers and advertising dollars residing in South Carolina in this market.

3. I have reviewed the attached Comments, and declare that the facts contained in the Comments are true and correct to the best of my knowledge and belief formed after reasonable inquiry, that the Comments have a sound basis in both fact and law, and the Comments are not interposed for the purpose of delay or any other improper purpose.

4. I further state that it is Meredith's intention to operate WHNS as a station licensed to Greenville, South Carolina, if the city of license change is allowed. WHNS will continue to operate with its present transmission facilities. Moreover, we will

continue to serve the entire market, including Asheville, North Carolina, with regular news and other informational programming.

I, Richard Williams, on behalf of Meredith Corporation, do hereby declare and affirm, under penalties of perjury, and after first being warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. § 1001), that all statements made by me in the foregoing Declaration are made on my own personal knowledge, and those statements are true.

Richard Williams, Vice President and
General Manager
WHNS(TV)

Dated: January 16,2003

Petition for Rule Making
filed by Meredith Corporation
on February 14,2002

CARVEY, SCHUBERT & BARER
LAW OFFICES

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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FEB 14 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
C/o Vistronix, Inc.
236 Massachusetts Avenue, NW, Suite 110
Washington, DC 20002

Re: Petition for Rule Making

Meredith Corporation
Television Station WHNS, Asheville, North Carolina

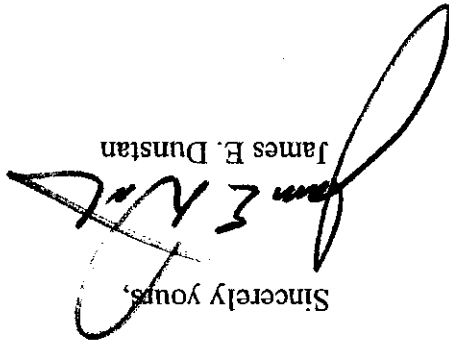
Dear Mr. Caton:

Transmitted herewith on behalf of Meredith Corporation, licensee of Television Broadcast Station WHNS, Asheville, North Carolina, are an original and four copies of its "Petition for Rule Making" to amend the Table of Television Allotments under Section 73.606(b).

If there are any questions concerning this matter, kindly communicate directly with this office.

Sincerely yours,

James E. Dunstan



Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter Of)	
)	
Amendment of Section 73.606(b))	MM Docket No. RM –
Table of Allotments)	
Television Broadcast Stations)	
(Asheville, North Carolina and)	
Greenville, South Carolina))	
)	

TO: The Chief, Allocations Branch
 Policy & Rules Division
 Mass Media Bureau

Petition For Rule Making

Meredith Corporation (“Meredith”), licensee of Television Broadcast Station WHNS, Asheville, North Carolina, by its attorneys and pursuant to Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b), and Section 1.420 of the Commission’s rules and regulations, 47 C.F.R. § 1.420, hereby requests that the Commission amend the Table of Television Allotments (Section 73.606(b)) as follows:

Delete UHF Channel 21 (and paired digital Channel 57) at Asheville, North Carolina, and **allot** UHF Channel 21 (and paired digital Channel 57) to Greenville, South Carolina.

Further, pursuant to the Commission’s rules, WHNS’ licenses would be modified to specify the new city of license without allowing competing applications.’ As

’Modification of FM and TV Authorizations, 4 FCC Rcd 4870, 4873 (1989); aff’d Modification of FM and TV Authorizations (Reconsideration), 5 FCC Rcd 7094 (1990).

demonstrated below, grant **of** this Petition will better effectuate the purposes underlying the allotment table by recognizing the true nature **of** the Greenville, South Carolina television market, and allow Meredith's WHNS to better serve its viewers. In support of this Petition, Meredith submits:

I. Introduction

The Commission's obligations under Section 703(b) **of** the Communications Act **of** 1934, as amended, (the "Act") is to provide a "fair, efficient and equitable distribution **of** radio service" to the various cities and communities across the country.' The priorities for distributing television stations equitably across the country are:

(1) to provide at least one television service to all parts of the United States, (2) to provide each community with at least one television broadcast station, (3) to provide a choice **of** at least ~~two~~ television services to all parts **of** the United States, (4) to provide each community with at least ~~two~~ television broadcast stations, and (5) to assign any remaining channels to communities based on population, geographic location, and the number **of** television services available to the community **from** stations located in other communities.³

Currently, the stations assigned to the Greenville television market are allocated to the following cities:

Asheville, NC	WASV (UPN); WHNS (FOX) WLOS (ABC); WUNF (Ed.)
Greenville, SC	WGGS (Ind.); WNTV (Ed.) WYFF (NBC)

² There is no doubt that the term "radio" appearing in the statute also applies to the allocation of television stations as well.

³ *Sixth Report and Order*, 41 FCC 148, 167 (1952) ("Television Allocation Priority Policy"); *affirmed in Modification of FM and TV Authorizations (Reconsideration)*, 5 FCC Rcd 7094, 7098, n.4 (1990).

Spartanburg, SC	WSPA (CBS), WRET (Ed.)
Anderson, SC	WBSC (WB)
Greenwood, SC	WNEH (Ed.)
Toccoa, GA	WNEG (CBS)

The market hosts eight commercial and four non-commercial television stations. There are far from twelve independent voices, however. Three of the four non-commercial stations (WRET, WNTV, and WNEH) are licensed to the South Carolina Educational Television Commission. The Glencairn station (WBSC⁴, WB affiliate), is LMA'ed to Sinclair, which also owns WLOS (ABC affiliate) in the market. The Bureau recently denied Sinclair's attempt to acquire WBSC as **part** of its global takeover of Glencairn, noting that there were insufficient independent voices in the market to allow such an acquisition.⁵ The Commission further fined both Glencairn and Sinclair \$40,000 each for unauthorized transfer of control, further evidencing the lack of independent voices in the Greenville market.⁶ Media General owns WSPA and WNEG, and is seeking to purchase WASV.⁷

Although the allocation of four stations to Asheville, NC and three stations to Greenville, SC may have made sense in the past, the changing dynamics of the Greenville television market call for a change of city of license of WHNS to South Carolina,

⁴ WBSC's former call letters were WFBC.

⁵ *Edwin L. Edwards*, FCC 01-336, released 12/10/01, ¶ 36.

⁶ *Id.* at ¶ 29

⁷ *See In re Application of Pappas Telecasting of Carolinas*, File No. BALCT-20010727ABS, DA 02-103 (MMB, released January 15, 2002), petition for reconsideration pending.

consistent with the “fair, efficient and equitable distribution of radio service” called for in Section 307(b).

11. Greenville is the Dominant Center of the Market

In 1970, Buncombe County, North Carolina, which contains Asheville, had a population of 145,000. Greenville County, South Carolina, housing Greenville, had a population of 240,774. Thirty years later, the population gap has widened. According to the Year 2000 census, Buncombe County’s population had increased to 196,274, while Greenville County’s population rose to 358,936, almost twice that of Buncombe County.’ Twice as many people moved to Greenville County in that period compared to Buncombe County.’ Today, sixty-six (**66**) percent of the television households in the Greenville market now reside in South Carolina.

In addition to Greenville being the population center of the market, it also has grown to become the economic center of the market as well. In discussing the politics of South Carolina, one commentator described Greenville as “a burgeoning metropolitan area infused with new foreign investment.”⁸ According to 1997 government census figures, the amount of retail trade conducted in the Greenville MSA (\$9.2 billion in revenues) dwarfs that conducted in the Asheville **MSA** (\$2.2 billion in revenues).⁹ Greenville County generated \$4.4 billion in 1997 retail revenues, while Buncombe

⁸ See Exhibit A

⁹ *Id.*

¹⁰ See <http://w\nv.hyu.edu/outsidemonevi998/SCSen.htm> (discussion of 1998 South Carolina Senatorial campaign).

¹¹ See Exhibit B

County, home of Asheville, generated less than half that amount, **\$2.2 billion**.¹² In three other economic categories tracked by the Census Bureau (revenues generated by business engaged in arts and recreation, accommodation and food services, and professional, scientific and technical services), the disparity between the two local economies is almost staggering.” Within these three categories, the Greenville **MSA** generates eight times the revenues compared to the Asheville MSA (**\$4.9 billion** to \$575 million). The same is true when viewed at the city level, where these three categories of businesses generate \$3.4 billion in revenues in Greenville, but only \$471 million in Asheville.

When retail trade, professional services, accommodation and food, and arts and entertainment are combined, the city of Greenville generates more than twice the economic activity of Asheville (\$5.4 billion to \$2.2 billion in revenues). Yet Asheville has more television stations allocated to it than does Greenville.

111. WHNS is Considered A South Carolina Station, Not a North Carolina Station

WHNS serves the entire market with its local news and public affairs programming, as well as being the FOX affiliate for the market. It is, however, considered by most people to be a South Carolina station, and not a North Carolina station. As discussed above, with most of the households in the market residing in South Carolina, and the city of Greenville generating eight times the economic activity of Asheville, virtually all of WHNS’ local advertising revenues come from South Carolina-

“*Id*

¹³ It is from these four categories that television stations can expect to receive most of the local television advertising, as they describe businesses which market directly to consumers

based businesses.¹⁴ Those advertisers buy time on WHNS not only because it **serves** the market, but because they consider WHNS to serve South Carolina, and the environs of Greenville.

WHNS General Manager Ray Mirabella was recently elected to the Board of Directors of the South Carolina Broadcasters Association – **even** though his station technically is licensed to North Carolina. Even other broadcasters consider WHNS to be a South Carolina station.

Changing WHNS' city of license to Greenville, South Carolina, will only memorialize what the market has already decided. More important, however, the change will allow WHNS to better compete in a market where fully half of the stations are not independently owned and operated, because of lack of advertising revenues available.

IV. Legal Basis of Changing WHNS' City of License to Greenville, South Carolina

As demonstrated below, the Commission can change the city of license of WHNS from Asheville, North Carolina, to Greenville, South Carolina, consistent with 307(b), as well as the allocation priorities listed above.

¹⁴ See Declaration of Ray Mirabella, General Manager of WHNS. Mr. Mirabella also points **out** that North Carolina advertisers consider WHNS to **be** a South Carolina station, and therefore do not spend any significant advertising dollars on the station.

A. The Change Can Be Made Consistent With FCC Engineering Rules

The attached Engineering Statement of Joe Snelson, Director of Engineering for Meredith Corporation, demonstrates that the change can be made consistent with all present signal and interference requirements. Specifically:

- 1) The change of city of license will not involve a change of transmission facilities, and therefore will cause no new interference to any television station;
- 2) From its present transmission location, WHNS will be able to place a City Grade Contour over the city of Greenville, South Carolina with both its analog and digital signals, in compliance with Section 73.685 and Section 73.625.¹⁵

B. Asheville Will Remain Adequately Served

A change in city **of** license **for** WHNS will not deprive Asheville of any local service. As discussed above, WHNS contemplates no change in its transmitter location, or the strength or quality **of** signal it will place over Asheville, North **Carolina**.¹⁶ As such, there will be no loss of service to Asheville.” In addition, Meredith commits to continuing service to Asheville and its environs by way of WHNS’ local **news** and other

¹⁵ 41 C.F.R. Sec. 73.685, 73.6245

¹⁶ The maps attached to the Snelson Engineering Statement make clear that Asheville will continue to receive a City Grade or better signal from both WHNS and **WHNS-DT**.

¹⁷ The Commission has noted that a change of community **of** license which requires no change in transmitter site, channel, or channel class raises the fewest regulatory concerns. 4 FCC Rcd at 4873-74.

local public affairs programming. In short, Meredith has no intention of abandoning Asheville.”

Moreover, as discussed above, Asheville currently has more television stations than does Greenville. Even after changing WHNS’ city of license to South Carolina, Asheville will continue to have two commercial stations (WASV, and WLOS), and one non-commercial television station (WUNF) allotted to it. The Commission therefore need not be worried about a loss of first or second service to Asheville.” Nor need the Commission worry that this change would result in the “shifting of service from an underserved rural to a well-served urban area.”” If anything, currently Asheville is “overserved,” since it has been allocated **four** stations, while Greenville, in a much more densely populated area, has been allocated only three.

C. No Other Priorities Are Negatively Impacted

Allowing WHNS to change its city of license **from** North Carolina to South Carolina also will not negatively impact any of the other “priorities” established by the Commission. Asheville will not lose first local service. Greenville will not gain first local service. The Commission, however, does not require that a licensee demonstrate an

¹⁸ The Commission has previously concluded that it will not consider the degree of loss of service to a community, unless such loss would constitute a loss of first or second service. *Modifications of FM and TV Authorizations*, 4 FCC Rcd at 4873.

¹⁹ *Id.* (petitions will not be considered where change of city of license will result is loss **of** only local service).

²⁰ *Modification of FM and TV Authorizations (Reconsideration)*, 5 FCC Rcd at 7096

advantage under any of the “higher” priorities, however, in order to grant a city of license change.^{21/}

D. The Change Will Result In a “Preferential Arrangement of Allotments”

When the Commission amended its rules in 1989 to clarify when it would allow licensees to change cities of license, it indicated that it would be flexible in its analysis of such proposed changes, since stations *are* in the best position to determine how to best serve their markets.²² It indicated that it would evaluate such petitions under its priorities, and grant those which “would result in a preferential arrangement of allotments.”²³ At the same time, the Commission clearly indicated that it was not wedded to its existing table of allotments, and that changes could be made for many reasons, so long as they did not result in denial of service, met with all applicable interference requirements, and generally advanced the “fair, efficient and equitable distribution of radio service.”²⁴

Meredith submits that the present Petition does just that. **WHNS** struggles in a difficult television market, where it is faced with multiple competitors who own or control two or more stations in the market. In order to remain competitive in the market,

²¹ See, e.g., *Grants & Milan, New Mexico*, DA 00-2375 (released October 20, 2000)(change granted when only “fourth” priority – second local service – was implicated).

²² *Modifications of FM and TV Authorizations*, 4 FCC Rcd at 4873; see also *Reconsideration Order*, 5 FCC Rcd at 7098, n.4 (the Commission will apply the priorities to television changes “in a more flexible fashion than the FM priorities due to the recognition that television is a more regional service”).

²³ 4 FCC Rcd at 4873

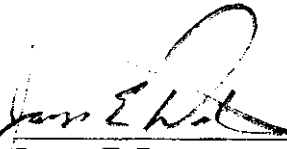
²⁴ *Id.* at 4874.

WHNS needs to solidify its advertising base, a base that resides predominantly in South Carolina.

WHEREFORE, Meredith respectfully requests that the Commission issue a Notice of Proposed Rule Making seeking comment on whether the table of allotments should be amended to delete analog Channel 21 and digital Channel 57 from Asheville, allocate those channels to Greenville, and modify **Meredith's** licenses for WHNS to specify Greenville as the city of license **for** WHNS and WHNS-DT.

Respectfully submitted,

MEREDITH CORPORATION



James E. Dunstan
Its Attorneys

GP JEY. SCHUE T & BA
1000 Potomac Street N.W., Fifth Floor
Washington, D.C. 20007
202-965-7880

February 14, 2002

DECLARATION

Ray Mirabella, declares, under penalty of perjury, that the following **is** true and correct:

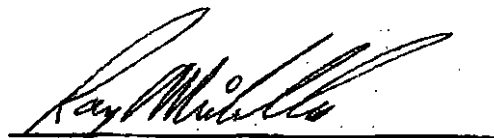
1. I **am** Vice President and General Manager **of** Meredith Corporation's television station **WHNS**, licensed **to** Asheville, North Carolina (**FIN** – 72300), in the Greenville-Spartanburg, SC-Asheville, NC-Anderson, SC television market ("Greenville market").
2. I have reviewed the attached "Petition For Rule Making" and the attachments thereto, and state that the facts contained therein are true and correct to the best of my knowledge and information.
3. **WHNS**, although it is licensed to **Asheville**, North Carolina, **is** considered **by** most of our advertisers to be a South Carolina station. Most **of** the households in the Greenville market are located **in** South Carolina, and the vast majority of economic activity and local advertising dollars come **from** South Carolina businesses in the market.
4. Those advertisers recognize WHNS as a South Carolina station, notwithstanding its allocation to a North Carolina community.
5. WHNS draws virtually no local advertising dollars **from** North Carolina, where advertisers also view **us** as a South Carolina station. **With the** economy shifting to Greenville and other surrounding South Carolina communities, it is becoming **more** and more difficult to compete **in** the market where **we** are technically licensed to another state.

6. I was recently elected to the Board of Directors of the South Carolina Broadcasters Association, **in** recognition of my position at a station that serves South Carolina.

I hereby verify that all statements contained herein and in the attached Petition for Rule Making are true to the best of my knowledge, information and belief formed after reasonable inquiry, that the Petition is well grounded in **fact**, and that it **is** not interposed for any improper purpose.

Date:

2/14/02



Ray Mirabella
General Manager
WHNS
Asheville-Greenville